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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 634

KENNETH M. KEEFE AND WALLACE D. BRADFORD,
Appellants,

vs.

EARL L. CLARK, DRAIN COMMISSIONER OF OAKLAND COUNTY, MICHIGAN, AND BOARD OF SUPERVISORS OF OAKLAND COUNTY, CITY OF ROYAL OAK, INTERVENOR.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN.

MOTION TO DISMISS OR AFFIRM.

HARRY J. MERRITT,
WILLIAM CLARENCE HUDSON,
Counsel for Appellees.

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Michigan Public Acts of 1937, Act 144, as amended by Act 282 of the Michigan Public Acts of 1939 and Act 234 of Michigan Public Acts of 1941	1
Public Acts of Michigan of 1937, Act 155	2

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Appellants,

vs.

EARL L. CLARK, DRAIN COMMISSIONER OF OAKLAND COUNTY, MICHIGAN, AND BOARD OF SUPERVISORS OF OAKLAND COUNTY, CITY OF ROYAL OAK.

ALTERNATIVE MOTION TO DISMISS OR AFFIRM.

Come now the Appellees, Earl L. Clark and Board of Supervisors of Oakland County and Intervened Appellee, City of Royal Oak and respectfully move this Honorable Court to dismiss the Appeal heretofore ordered in the above entitled cause on December 16, 1943 and or in the alternative, to affirm the decision of the Michigan Supreme Court rendered October 11, 1943.

As reason for this Court to grant Appellees motion they represent as follows:

First, that the question as to whether or not Act 114 of the Michigan Public Acts of 1937, as amended by Act 282 of Michigan Public Acts of 1939 and Act 234 of Michigan Public Acts of 1941 (par. (a), page 4 of Appellants "Petition for appeal from the Supreme Court of Michigan to the Supreme Court of the United States), was or was not vio-

lative of Article 1, Section 10 of the Federal constitution, was never presented to the Oakland County Circuit Court nor the Michigan Supreme Court, and under the well established rules of this Court is not reviewable.

Second, Appellants "Statement of Questions Involved" in the brief filed in the Michigan Supreme Court were as follows:

> 1. When lands in a drain district have passed through a scavenger sale under Act 155, Public Acts 1937, as amended, and are again privately owned, are they exempt from additional deficiency drain taxes provided under Act 129, Public Acts 1939?
>
> The Lower Court said "Yes."
> Appellants contend answer should be "No."
>
> 2. If Act 155, Public Acts 1937, as amended, can be construed as making such lands exempt from deficiency assessments, does it violate Article X, Section 9, of the State Constitution?
>
> The lower court impliedly said "No."
> Appellants contend answer should be "Yes."
>
> 3. If Act 155, Public Acts 1937, as amended, can be construed as making such lands exempt from deficiency assessments, does it violate Article I, Section 10, of the Federal Constitution, and Article II, Section 9, of the State Constitution?
>
> The court impliedly said "No."
> Appellants contend answer should be "Yes."
>
> 4. Do municipalities, against which an at large tax is spread, and lands which have not passed through a scavenger sale, become exempt from a deficiency levy under Act 129, Public Acts 1939?
>
> The court said "Yes."
> Appellants contend answer should be "No."

In paragraph 3 above is the only reference to the Federal constitution, Article I, Section 10, and that in reference to

Act 155 of Public Acts of Michigan for 1937, as amended, but no contract relation complained of was created or violated between the State and the Appellants or the Appellees and the Appellants, or any other persons, because of sale under Act 155, hence there is no question of impairment of contract which would give this Court jurisdiction.

Thirdly, if the statutes existing at the time the bonds were sold (Act 316 of 1923, Section 18, Chapter 10) were part of their contract and gave Appellants the rights they claim are here impaired, namely the right to a deficiency spread and perpetual liens against all of the lands in the drain district, those rights were taken away by operation of Act 114 of 1937, the constitutionality of which was not challenged in the Michigan Supreme Court and cannot be challenged here.

Fifth, the only contractual right created by Act 155 of 1937 was the right of the drain district to share in the proceeds of the sale of the lands the State owned free and clear by virtue of the operation of Act 114 of 1937, and each drain district has received such monies including the East Clawson Storm Sewer Drain District here involved.

This motion is based on the files and record in this Court and cause and the affidavit of counsel hereto attached and brief accompanies the same.

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